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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,818	12/06/2001	Mary Carmen Gasco	8363M	7279

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/18/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/010,818

Applicant(s)

GASCO ET AL.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f): \_\_\_\_
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                            | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____   |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other:  |

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The drawings are objected to because Figure 7 is not identified as a section view in the brief drawing description as it represents section A-A. Figures 7, 8 and 9 are section views but do not show the appropriate crosshatching where elements are cut or sectioned. Figures 8 and 9 are both considered to be the same cross section of C-C but for some unexplained reason show different sections. Section C-C taken from Figure 7 shows the view looking downwardly while the views of this section in Fig. 8 and 9 seem to be side or elevation views. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The use of the trademark PRINGLES has been noted in this application. It should be capitalized (by capitalizing every letter in the trademark) wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 5-9, 16 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is indefinite because it seems to contradict claim 1. Claim 5 states that the lower surface of the lowest snack piece does not rest upon the bottom panel and claim 1 states that the peripheral edge of the snack piece rests upon the bottom panel. When viewing Fig. 9, the lowest

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surface of the snack piece is at the peripheral edge where it makes contact with the bottom panel. Perhaps the claim could be amended to more clearly state that the remainder of the underside of the snack piece and portions other than the peripheral edge does not rest upon the bottom panel. Claim 16 is similarly indefinite.

Claim 6 recites the limitation "the saddle height" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the center height" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "the center radius" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 18 recites the limitation "the saddle height" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 18 recites the limitation "the center height" in line 2. There is insufficient antecedent basis for this limitation in the claim.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson.

Johnson discloses a package liner (10) defining a shaped container bottom for containing a plurality of curved snack pieces (14), each snack piece having a peripheral edge and a lower surface (see the combination of the container bottom and snack pieces in Fig. 7), within the container, the container bottom comprising a bottom panel (support surface 20) comprising at least two base portions (lines 16 and 18) and a bottom panel center (that portion between the lines 16 and 18) disposed between the base portions, the bottom panel center having a concave curvature about a first axis (horizontal axis of bottom panel center) of the container, wherein the concave curvature of the bottom panel substantially conforms to the curvature of the snack pieces and at least a portion (portions 14a and 14b) of the peripheral edge of a lowest snack piece of the plurality of snack pieces rests upon the base portions of the bottom panel. The overall shape of the shaped bottom has a concave curvature as viewed from the underside as shown in Fig. 1 and 7. The corrugated structure of the shaped bottom also defines concave shapes as viewed from the top as well as the underside. Insofar as the shaped bottom contains the snack pieces as in enclosing the snack pieces, the shaped bottom includes portions of the side wall (22 and 24). For claims 2-5, 10, 12-14 and 16, the bottom panel is integral to the container, the concave curvature is downwardly curved about the first major axis of the bottom panel, wherein the curvature of the bottom panel conforms to the curvature of the plurality of snack pieces without the lower surface of the underside surface of the lowest snack piece resting upon the bottom panel (insofar as this lower surface doesn't include a surface of the peripheral edge) and wherein the bottom panel has a second upwardly concave curvature (curvature of the corrugations) about a second axis of the bottom panel. For claim 17, the thermoformed

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limitation is a method limitation in a product claim, it is readily apparent that a structurally identical container could be made without thermoforming. For claim 15, the base portions may be slightly curved to flat in configuration, this meets the substantially flat limitation stated. For claims 6-9, 15 and 18, the dimensions of the snack piece and container bottom appear within the ranges mentioned. For claims 19 and 20, the package liner (10) is considered a container.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Baur et al. (Baur).

Baur discloses a package (10) defining a shaped container bottom (end closure 12) for containing a plurality of curved snack pieces (15), each snack piece having a peripheral edge and a lower surface, within the container, the container bottom comprising a bottom panel (end closure 12) comprising at least two base portions (portions of the edges of end closure 12) and a bottom panel center (that portion inside of the edges) disposed between the base portions, the bottom panel center having a concave curvature (the inner surfaces of the inner and outer walls of the U-shaped bead on end closure 12, the upper end closure 13 being shown in Fig. 1 and in cross section by Fig. 4, the structure of the lower end closure would be similar) about a first axis (longitudinal center axis of package 10) of the container, wherein the concave curvature of the bottom panel substantially conforms to the curvature of the snack pieces (at their peripheral edges) and at least a portion (lowermost portions) of the peripheral edge of a lowest snack piece of the plurality of snack pieces rests upon the base portions of the bottom panel.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Griffith.

Griffith discloses a package (10) defining a shaped container bottom (bottom cushioning device 18) for containing a plurality of curved snack pieces (chips), each snack piece having a

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peripheral edge and a lower surface, within the container, the container bottom comprising a bottom panel (bottom cushioning device) comprising at least two base portions (portions of the edges of the cushioning device) and a bottom panel center (that portion inside of the edges) disposed between the base portions, the bottom panel center having a concave curvature (top panel 21) about a first axis of the container, wherein the concave curvature of the bottom panel substantially conforms to the curvature of the snack pieces (at their peripheral edges) and at least a portion (lowermost portions) of the peripheral edge of a lowest snack piece of the plurality of snack pieces rests upon the base portions of the bottom panel.

Claims 1-7 and 10-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Sagan.

Sagan discloses a package (10) defining a shaped container bottom (base 14) for containing a plurality of curved snack pieces (shrimp 70), each snack piece having a peripheral edge and a lower surface, within the container, the container bottom comprising a bottom panel (base 14) comprising at least two base portions (portions of the bottom wall 50 just to the inside of slots of the well 40a and portions at flange 36) and a bottom panel center (that portion between the inside of slots of well 40a and the flange 36) disposed between the base portions, the bottom panel center having a concave curvature (the slots of well 40a as well as the underneath surface of the well) about a first axis (longitudinal center axis of each slot) of the container, wherein the concave curvature of the bottom panel substantially conforms to the curvature of the snack pieces and at least a portion (lowermost portions) of the peripheral edge of a lowest snack piece of the plurality of snack pieces rests upon the base portions of the bottom panel (at the bottom wall 50 just to the inside of slots of the well 40a).

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruiz.

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Ruiz discloses an edible shell or bowl defining a shaped container bottom, a plurality of bowls are packaged in a stacked array, the lowest bowl in the stack defines the shaped bottom and holds curved snack pieces defined by the other bowls in the stack placed within the lowest bowl. Each snack piece having a peripheral edge (defined by outermost concentric bead 24) and a lower surface (defined by that portion of bottom 22 inside of the peripheral edge and the outermost concentric bead), within a container, the container bottom comprising a bottom panel (22) having a concave curvature about a first axis (the longitudinal center axis of the container bottom) of the bottom panel, wherein the concave curvature of the bottom panel substantially conforms to the curvature of the snack pieces and at least a portion of the peripheral edge of a lowest snack piece of the plurality of snack pieces rests upon the bottom panel.

Claims 1-4, 6-10 and 19 rejected under 35 U.S.C. 102(b) as being anticipated by a stack of three or more PRINGLES potato crisps as disclosed by applicant's specification.

PRINGLES potato crisps have a curved structure which is extremely similar to that depicted in Fig. 1 and 2. However, applicant has not indicated Fig. 1 and 2 to represent prior art and the examiner doesn't have any PRINGLES product to provide as a sample. In a stack of three or more of PRINGLES potato crisps, the bottommost crisp defines a shaped container bottom while the other crisps define the curved snack pieces, each snack piece having a peripheral edge and a lower surface, the lowest snack piece or the crisp which is immediately adjacent to the bottommost crisp rests upon the bottom panel formed by the bottommost crisp.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson, Griffith and Baur.

Each reference discloses the invention individually except for the dimensions recited. The dimensions recited represent values close to what one having ordinary skill would expect for a snack food container and are well known. No criticality has been associated with the dimensions outlined in the specification. It would have been obvious to modify the dimensions to conform the container bottom to the shape and size of typical snack chips, crackers, and cookies as a matter of design choice. It would have also been obvious to modify the shape and size of the snack to that of a typical container bottom.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sagan.

Sagan discloses the invention except for the center radius dimensions. It would have been obvious by design choice to reduce the scale (make invention smaller) in order to accommodate smaller shrimp and reduced amount of dipping sauce required for smaller shrimp so that the size of the center radius is less than 60 mm and between 15 to 35 mm.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc  
April 14, 2003